

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERT COX,

Plaintiff,

v.

CIV 09-0576 JB/GBW

JAMES KACZMAREK,

Defendant.

ORDER TO FILE A DISPOSITIVE MOTION OR
MARTINEZ REPORT

This *pro se* prisoner civil rights matter is before the Court *sua sponte*. Plaintiff Cox alleges that his constitutional rights were violated while he was a detainee at the Southern New Mexico Correctional Facility. The Complaint alleges that a floor-mounted stool in Cox's assigned cell did not have a seat. To sit and eat his meals, Cox found it necessary to use a temporary seat on the base of the stool. Approximately six months after he began using these temporary seats, a seat shifted, and he fell to the concrete floor. Cox alleges that he suffered injuries to his spine and back in the fall. He asserts that the facility personnel's indifference to inmates' health and safety caused his injuries. Plaintiff is seeking nominal, compensatory and punitive damages.

On July 7, 2009, the Court dismissed all named defendants from this action except for Defendant Kaczmarek, *Doc. 7*, and on January 4, 2010, Defendant Kaczmarek

answered the complaint. *Doc. 17.*

Under *Martinez v. Aaron*, 570 F.2d 317, 320 (10th Cir. 1978), this Court may order defendants to investigate the incident or incidents underlying Plaintiff's lawsuit and submit a report of their investigation in order to develop a factual or a legal basis for determining whether a prisoner plaintiff has a meritorious claim. *See, e.g., Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987).

A *Martinez* Report may be used in a variety of contexts, including motion for summary judgment or *sua sponte* entry of summary judgment. When a *Martinez* Report is used for summary judgment purposes, the *pro se* plaintiff must be afforded an opportunity to present conflicting evidence to controvert the facts set forth in the report. *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

Wherefore,

IT IS HEREBY ORDERED that Defendant either file a dispositive motion within 45 days of receipt of this Order or that he file a *Martinez* Report (with or without a dispositive motion)¹ within 75 days of receipt of this Order in accordance with the instructions below:

1. Defendant's comprehensive *Martinez* Report shall address all of Plaintiff's allegations as well as any defenses Defendant wishes to pursue, and it should include, but is not limited to: whether documents or other records pertaining to the events exist;

¹ If the Defendant's dispositive motion relies on facts which would be properly before the Court only through a *Martinez* Report, the motion should be filed along with the *Martinez* Report.

whether prison policies or regulations address the situation; whether any video footage of either alleged incident exists; and whether any photographs of Plaintiff after either alleged incident exist.

2. If documents and records do exist, Defendant shall include copies of them as attachments to the *Martinez* Report. The attachments should be arranged in a logical order and be Bates-stamped or otherwise be clearly serially marked;

3. Defendant must provide affidavits to properly authenticate submitted documents, and may also submit other affidavits in support of the *Martinez* Report;

4. The submission of documents alone shall not be considered in compliance with this Order. Defendant is also expected to prepare the “report” portion of the *Martinez* Report that discusses the claims and the submissions that relate to them;

5. The Court is aware that materials contained in corrections files may be sensitive and that there may be valid reasons for keeping such information secret. As such, Defendant may redact confidential portions of documents submitted with the *Martinez* Report and provide that version to Plaintiff. Alternatively, he may request that Plaintiff not be permitted to review certain portions of the *Martinez* Report and its attachments. If so, Defendant must make his objections to the Court fourteen (14) days prior to the *Martinez* Report filing and service date below. The entire *Martinez* Report must be submitted along with the objections, both under seal, to the Court for ruling;

6. Plaintiff shall file and serve his response to the Defendant’s Motion or Report within 30 days of its filing; and

7. Defendants shall file and serve their reply, if any, within 14 days of the filing of Plaintiff’s Response.

THE PARTIES ARE HEREBY GIVEN NOTICE that the *Martinez* Report may be used in deciding whether to grant summary judgment on Plaintiff's claims, whether by motion or *sua sponte*; as such, the parties should submit whatever materials they consider relevant to Plaintiff's claims. *See Hall*, 935 F.2d 1106.

A handwritten signature in black ink, appearing to read "J.B. Westbrook", is written above a horizontal line.

UNITED STATES MAGISTRATE JUDGE